

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 36 of 2023

		Date of Decision: 06.11.2023
Shri. Edwos Syngkli	Vs.	State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Ms. S. Nongsiej, Adv.
For the Respondent(s)	:	Mr S.A. Sheikh, GA. Ms. S. Bhattacharjee, GA.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT (ORAL)

1. Heard Ms. S. Nongsiej, learned counsel for the petitioner who has submitted that this petition has been filed with a prayer for enlargement of the petitioner on bail who is an accused in connection with Special (POCSO) Case No. 6 of 2022 pending before the Court of the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh.

2. It is the submission of the learned counsel that the petitioner/accused on being arrested in connection with the said case, particularly Women P.S. Case No. 55 (10) 2022 under Section 5

(k)(l)(n)/6 of the POCSO Act, 2012, has been remanded to custody and is still in custody for about 1 year and 2 months. The learned counsel has also submitted that the charge sheet has been filed by the Investigating Officer and the matter has been brought for trial before the Court of the learned Special Judge (POCSO), however, till date, charges have not yet been framed and no witnesses have been examined on behalf of the prosecution. This delay which is contrary to the provision of Section 35 of the POCSO Act, 2012, has prejudiced the rights of the accused as far as fair and speedy trial is concerned and as such, at this point of time, it is prayed that the petitioner/accused may be allowed to be released on bail with any conditions to be imposed by this Court.

3. Mr. S.A. Sheikh, learned GA appearing on behalf of the State respondent has submitted that from the FIR, it is very clear that the accused has perpetrated sexual assault upon the survivor, who is a minor of about 13 years at the relevant point of time. The statement of the survivor recorded under Section 164 Cr.P.C has clearly implicated the petitioner/accused person. Accordingly, the offence being very serious in nature, this Court may be pleased to reject the prayer made for grant of bail.

4. The learned GA has also pointed out that the

petitioner/accused had earlier approached the learned Special Court for grant of bail, which was rejected vide order dated 26.06.2023. In fact, copy of the said order has been annexed in the bail application filed by the petitioner. On perusal of the said order, it is seen that the court has given a day to day explanation of how the trial has proceeded and as such, there is no question of delay in proceedings before the said court. This being the case, it is prayed that this petition may be dismissed as devoid of merit.

5. This Court has considered the submission made by the parties, and would observe that the charge sheet has been filed which would mean that the petitioner/accused should have presented his case based on merits thereof. However, the only submission advanced is on the ground of delay and reliance was placed on Section 35 of the POCSO Act to say that because there has been delay, therefore, the petitioner/accused is entitled to grant of bail. This line of argument may not be sufficient, inasmuch as, the Court would consider the prayer for grant of bail, taking into account all the relevant factors which from time to time, has been stressed upon in a catena of judgments by the Hon'ble Supreme Court and various High Courts, that is, as regard the principles of grant or non-grant of bail.

6. While considering a bail application, the Court has to look into the gravity and nature of the offence alleged, the extent of punishment, if

convicted and also the fact that the accused, if enlarged on bail, may abscond or tamper with the evidence and witnesses.

7. On the other hand, the Hon'ble Supreme Court has also in a catena of judgments stressed on the fact that principle of the rule of bail and not jail in the first instance, is also to be applied since while considering the prayer for grant of bail, the only concerned that the Court would look into, is whether the accused would abscond or that he may not take part in the proceedings.

8. Needless to say, the apprehension that the accused may threaten the witnesses, particularly the survivor has also to be looked into, taking into account the facts and circumstances of the case.

9. Under Section 35 of the POCSO Act, the provision specifies that a Special Court taking cognizance of the offence under the POCSO Act, has firstly to record the evidence of the child (survivor) within a period of 30(thirty) days, secondly, it is also incumbent upon the Special Court to complete the trial as early as possible within a period of 1(one) year from the date of taking cognizance of the offence. Considering the amount of time that this case has proceeded, the letter of this provision has not been complied with. Of course, this would not be fatal to the trial of the matter, since at the end of the day, it is incumbent upon the Court to

look into the other aspects of the matter conscientiously and to come to a verdict on all aspects of the case.

10. It is the contention of the learned counsel for the petitioner/accused that there is no reason given by the Special Court as to why charges could not be framed in time. Nothing under Section 35 of the POCSO Act specifies that reason ought to be given for delay in framing of charges. How the case is conducted before the court depends on the wisdom of the presiding officer of the said court.

11. Be that as it may, this Court has considered the matter and is of the opinion that at this point of time, the petitioner/accused should be given the opportunity to defend his case to the fullest and for that, a congenial atmosphere is required to be created.

12. In the case of ***Sanjay Chandra v. CBI reported in (2012) 1 SCC 40*** at para 21, the Hon'ble Supreme Court has observed that:

“21. In bail application, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”

13. Consequently, taking into account the facts and circumstances

of this case, this Court is of the opinion that the petitioner/accused may be enlarged on bail at this juncture. This petition is accordingly allowed.

14. The petitioner/accused, Shri. Edwos Syngkli is directed to be released on bail with the following conditions that:

- i) He shall not abscond or tamper with the evidence and witnesses;
- ii) He shall not leave the jurisdiction of the State of Meghalaya without prior permission of the court;
- iii) He shall not come into contact with the survivor or any of the witnesses during the pendency of the trial. Failure to do so, would entitle the prosecution to take necessary steps for cancellation of the bail;
- iv) He shall bind himself on a personal bond of ₹ 50,000/- (Rupees fifty thousand) only with one surety of like amount to the satisfaction of the Trial Court.

15. As observed above, this petition is accordingly disposed of. No costs.

Judge

Meghalaya
06.11.2023
"D. Nary, PS"